

**NO. CR-1180-18-C**

**STATE OF TEXAS**

**vs.**

**PETER UVALLE**

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**IN THE DISTRICT COURT**

**139TH JUDICIAL DISTRICT**

**HIDALGO COUNTY, TEXAS**

**BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS STATEMENTS AS INVOLUNTARILY COERCED IN VIOLATION OF TEXAS CCP ARTICLES 1.05, 38.22 & 38.23, CONSTITUTIONAL RIGHTS UNDER THE 4<sup>TH</sup>, 5<sup>TH</sup> 6<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENTS, AND TEXAS CONSTITUTION ARTICLE 1, SECTION 9**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Now comes, Peter Uvalle, Defendant, and files this brief by and through Lucia Regalado and Savannah Gonzalez, court appointed trial counsel for the defense, in support of and as addendum to the evidence and arguments elicited/made during the *Jackson v. Denno* hearing held in the 139<sup>th</sup> District Court on September 19, 2019.

**Issues Presented**

The Defendant filed this timely Motion to Suppress the video recorded statement made to Investigator Enrique Ontiveros on the basis that said statement was the product of a custodial interrogation, that there was no knowing, intelligent and voluntary waiver of *Miranda* rights prior to the procurement of said statement, and that said statement was not made voluntarily, but rather was the product of improper, coercive police conduct in violation of state statutory law and his federal due process rights. The Defendant raises the following specific issues:

1. Is a suspect subject to a custodial interrogation when he is interrogated while constrained to a hospital bed/room under constant law enforcement bedside monitoring, is prohibited from having any communication/contact with family

and is divested of his right to consent to medical treatment by law enforcement who unilaterally assumes this authority;

2. Is a purported waiver of Miranda warnings and the resulting statement voluntary where a suspect is youthful, lacks experience, is heavily medicated and has his will overborne by the coercive actions of and circumstances created by law enforcement; and
3. Is a subject's statement voluntary under Due Process when law enforcement, in addition to all of the previously discussed circumstances, also deprives him of access to medical care and basic necessities?

### **Statement of Facts**

Despite testimony that there were at least two other Pharr Police Department officers present during the statement in question, during the *Jackson v. Denno* hearing the State presented *only* the testimony of lead Investigator Enrique Ontiveros of the Pharr Police Department. Investigator Ontiveros testified that on December 15<sup>th</sup>, 2017 he, a law enforcement officer with over thirteen years of experience, responded to Doctor's Hospital at Renaissance (DHR) for the purpose of taking a statement from the Defendant, a suspect in an ongoing shooting investigation who was in post-op but had not yet awoken from surgery. Prior to his arrival at DHR, Investigator Ontiveros spoke to a nurse (whose name is both unrecalled and undocumented) at the hospital and was advised that the Defendant's status was "stable"—which Investigator Ontiveros understood to mean, "not sedated".

Investigator Ontiveros testified that from the time of the Defendant's arrival to the hospital to his arrival, Pharr PD was designated as the authorized agent for medical consent, the Defendant was not permitted to contact or have contact with his family members (or anyone

other than Pharr PD), and he was under 24-hour bedside watch. Investigator Ontiveros was to be notified immediately upon the Defendant's awakening post-op. Upon arrival to DHR at approximately one o'clock p.m, Investigator Ontiveros went directly to the hospital room and observed the Defendant to be laying down in a hospital bed with patches on his arms and connected to an IV with Officer Cerda sitting watch. Despite his admitted failure to inquire with the medical staff regarding the Defendant's medicinal regimen, Investigator Ontiveros further described the Defendant as lucid, not impaired and with "nothing coming out of his mouth".

In support of their position, the State admitted State's Exhibit 1, a copy of the recorded statement of accused; in it, the Defendant is read his *Miranda* warnings, is asked if he understands and is directed to initial each warning all at once. Investigator Ontiveros did not testify to any other indications that the Defendant actually understood these warnings. Next, the recording shows the following exchange:

Investigator Ontiveros: "It says here, did you understand the Miranda Warnings, which is your rights?"

Defendant: "Yes."

Investigator Ontiveros: "Okay. I need a check mark where it says "yes".

.....

Investigator Ontiveros: "And then it says, if so, would you like to waive your rights, um, right now and talk to me about the case."

Defendant: "I'll talk to you about the case."

The Defendant is then directed to sign the appropriate waiver line and the recorded portion of the interrogation commences. The Defendant's response here, which specifically *does*

*not acknowledge the requested waiver whatsoever*, is of the utmost importance as to the issue of the voluntariness of this purported waiver.

The Defendant testified to a multitude of relevant facts related to his background, drug usage on the day in question, his experience with law enforcement prior to and during the recorded portion of his custodial interrogation, his subjective feelings and mental state at the time of the interrogation and the mental and physiological effects he experienced from the medication administered at the hospital. The State called no other witnesses and did not controvert any of the evidence elicited by the defense.

### **Argument**

#### *Custodial Interrogation*

The issue of whether or not a subject is in custody is based upon a review of all of the objective circumstances in a particular case. *Dowthitt v. State*, 931 S.W.2d 244, 255 (Tex. Crim. App 1996). Texas courts have outlined four situations where a subject may be in custody—(1) when a subject is physically deprived of his freedom of action in a significant way; (2) when law enforcement tells a subject he cannot leave; (3) when law enforcement creates a situation in which a reasonable person would believe his freedom of movement is significantly restricted; and (4) when law enforcement has probable cause to arrest and does not inform the subject of his freedom to leave. *Id.* at 255.

In the instant case, the evidence shows that the Defendant awoke post-surgery to find himself being guarded by a rotation of Pharr PD officers at his hospital bedside. Investigator Ontiveros testified that while waiting for the Defendant to awaken, Pharr PD designated itself (and its agents) as the *only approved* visitor and sole agent for consent while the Defendant was a patient of DHR. Furthermore, once the Defendant was conscious, Pharr PD also restricted him

from having telephone access and prevented him from having any communication or contact with his family. The actions of Pharr PD resulted in a situation in which *any* reasonable person in the Defendant's shoes would believe that his freedom of movement was significantly restricted to a degree tantamount to arrest.

To trigger the safeguards of Tex. Code Crim. Proc. Art. 38.22 and *Miranda v. Arizona*, the burden is on the defendant to show that a statement was the product of custodial interrogation. Here, there is no question that the Defendant's statement resulted from a custodial interrogation—a fact uncontroverted by the State.

*Voluntariness under Texas Code Criminal Procedure Sec. 38.22, Miranda and Federal Due Process*

The State bears the burden to prove, by a preponderance of the evidence, that the Defendant's statement was made knowingly, intelligently, and voluntarily. Tex. Code Crim. Proc., Art. 38.22, §§ 2(b) & 3(a)(2). Voluntariness requires a review of and is assessed by considering the totality of the circumstances under which the statement was obtained. *Wyatt v. State*, 23 S.W.3d 18, 23 (Tex. Crim. App. 2000) and *Creager v. State*, 952 S.W.2d 852, 855 (Tex. Crim. App. 1997). The totality of the circumstances includes a review of the accused's experience, background and the conduct and characteristics of the accused. *Umana v. State*, (Tex. App.-Houston [14<sup>th</sup> Dist.] 2014, no pet.). Intoxication is also a relevant factor in the determination of voluntariness; "when the record reflects evidence of narcotics, medications, or other mind-altering agents, the questions becomes whether those intoxicants prevented the defendant from making an informed and independent decision to waive [his] rights." *Paolilla v. State*, 342 S.W. 3d 783, 792 (Tex. App.-Houston [14<sup>th</sup> Dist.] 2011). "A statement is 'involuntary,' for the purposes of federal due process, only if there was official, coercive conduct

of such a nature that any statement obtained thereby was unlikely to have been the product of an essentially free and unconstrained choice by its maker.” *Alvarado v. State*, 912 S.W.2d 199, 211 (Tex. Crim. App. 1995).

At the *Jackson v. Denno* hearing, the State presented one witness and elicited the following scant evidence in support of its claim that the Defendant understood his rights, voluntarily waived them and voluntarily gave the recorded statement:

1. That the Defendant appeared lucid, unimpaired and had “nothing coming out of his mouth”;
2. That Investigator Ontiveros read the *Miranda* warnings to the Defendant which the Defendant initialed and signed;
3. That the Defendant never asked to stop the interrogation and never asked for an attorney; and
4. That Investigator Ontiveros did not coerce or make any promises to the Defendant in exchange for his statement.

State’s Exhibit #1 shows the warnings administered by Investigator Ontiveros and the Defendant’s response—one that does not address or acknowledge the waiver, but only states that he will discuss the case. This evidence of the exchange between Investigator Ontiveros and the Defendant is of utmost importance because it underscores the fact that he *did not understand the contents of the waiver and expressly did not exercise a waiver*.

On cross-examination, Investigator Ontiveros admitted that prior to the beginning of the recorded statement of accused, he was in the hospital room with the Defendant and no less than two other officers (all armed with their service weapons) for over 45 minutes. Despite his well-established objective to obtain a statement from the Defendant immediately upon arrival to DHR,

Investigator Ontiveros conveniently failed to record the interaction from its inception and thus, deprived this Court of any tangible evidence of the interactions with the Defendant during this period—leaving the Court to wonder what coercive tactics were utilized.

Investigator Ontiveros testified that he had no prior dealings with the Defendant and could not speak to the Defendant's normal mental capacity. Further, Investigator Ontiveros did not avail himself to any relevant information regarding the Defendant's medical care or drug use (recreational or prescribed) in the days and hours before the statement was taken. The only inquiry that Investigator Ontiveros made was regarding the most recent administration of pain medication—6:30am. Investigator Ontiveros testified that the Defendant was unable to sign his medical consent and notification forms at the hospital and did not have the capacity to consent to treatment.

The Court in *Paolilla* noted that while intoxication is a factor to be considered in determining the voluntariness of an accused's statement, the record must reflect evidence that narcotics, medications, or other mind-altering agents" were present. *Paolilla vs. State*, 342 S.W. 3d at 792. Only then will the Court turn to the question of "whether those intoxicants prevented the Defendant from making an informed and independent decision to waive [his] rights." *Id.*

In *Paolilla*, the Court examined the voluntariness of the statement of the appellant, a heroin addict who claimed to be intoxicated due to ingested medications coupled with her suffering from acute opioid withdrawal. *Id.* at 787. In that case, the Court underscored the fact that the testimony of three San Antonio PD officers indicated that the subject "did not appear intoxicated," "spoke clearly and concisely," gave responses that appeared "calculated" and appeared to be "physically fine and lucid". *Id.* at 793. The Court seemed to be comforted by the notion that these officers testified to their experience in dealing with heroin addicts and did not

witness any of the symptoms of withdrawal or intoxication frequently associated with such addicts. *Id.* Despite the testimony provided by the defense's expert witness, a physician board certified in psychiatry and addiction medicine, there was no evidence presented in *Paolilla* that the appellant experienced or exhibited any symptoms of intoxication—only withdrawal.

This is distinguishable from the Defendant's case in that the evidence in the case at bar shows that the Defendant was heavily medicated prior to the interrogation and was experiencing some of the side effects commonly associated with these medications.

First of all, Investigator Ontiveros freely admitted to having no special training or knowledge of drugs/medication and their side effects. Investigator Ontiveros acknowledged the fact that the Defendant was connected to an IV morphine drip but ignored it, and he chose willful ignorance as it related to any medications or drugs that the Defendant was under the influence of at the time of the interrogation—a fact that would surely give the Court pause as to the reliability and credibility of law enforcement involved. Investigator Ontiveros elected to turn a blind eye to the fact that over the course of hours before his recorded statement, the Defendant was under the influence of a cocktail of antibiotics and heavy pain medications including, but not limited to:

1. Cefazolin

- a. An antibiotic that cause dizziness, headaches, altered mental state, light headedness, mental cloudiness, impairment of mental and physical performance, lack of coordination and severe pain.

2. Ertapenem

- a. An antibiotic that causes altered mental states, anxiety, dizziness, fatigue, fever, headache, insomnia;

3. Hydrocodone

- a. A Norco opioid that causes lightheadedness, dizziness, sedation, drowsiness, mental cloudiness, lethargy, impairment of mental and physical state, anxiety, fear, dysphoria and mood changes;
- 4. Meperedine, commonly known as “Demerol”
  - a. An opioid pain medication that causes agitation, lack of coordination, clouded sensorium, dizziness, euphoria, light headedness, sedation hallucinations, headache, paranoid anxiety and confusion; and
- 5. Morphine
  - a. An opioid pain medication that causes dizziness, drowsiness, headaches, euphoria, light headedness, nightmares, sedation, depression, hallucinations, nervousness and anxiety.

Secondly, unlike in *Paolilla*, here there is ample evidence that the Defendant was experiencing the intoxicating effects of these medications. Specifically, the Defendant testified that he went to DHR for treatment of gunshot wounds he sustained to his arm and chest. He demonstrated the mental cloudiness he experienced when he could not recall precisely what occurred between his arrival at the hospital and the point at which he awoke to approximately 10 officers in his hospital room—including Investigator Ontiveros who he recalled seeing a short time after he awoke. The Defendant described feeling scared and nervous, and he remembered asking to see his family. The Defendant recalls the fear, intimidation and anxiety he experienced with the “cops” at his bedside at all times and preventing him from contacting his family.

Although Investigator Ontiveros could not recount what happened in the 46 minutes that he was in the Defendant’s hospital room before beginning the recorded statement, the Defendant

definitively stated that Investigator Ontiveros questioned him during this time. The Defendant asked Ontiveros “if he could talk to family,” but was denied.

In further contrast to *Paolilla*, the Defendant viewing his statement of accused notes that he appears strange/different than his normal demeanor. He recalled feeling pain in his chest and experiencing headaches all the while going in and out of consciousness. The Defendant described that in addition to the medications administered to him, he had also consumed 15 Xanax pills over the course of the preceding day and night before his admission to the hospital, and he felt intoxicated during the interrogation. Each of these are established side-effects of the medications the Defendant was under.

Investigator Ontiveros agreed that his opinion as to the voluntariness of the Defendant’s waiver and statement was solely based on the Defendant’s verbal response and signature on the *Miranda* waivers. In hindsight, Investigator Ontiveros reluctantly agreed that this medicinal cocktail could very well have had an effect on the Defendant’s mental ability to give a voluntary statement.

Finally, the evidence showed that the Defendant was deprived of food, water, family and freedom of movement during the course of the interrogation. Moreover, when the Defendant could no longer bear the physical pain he was experiencing from the gunshot wounds and asked for pain medication, Investigator Ontiveros made the most egregious violation in denying him that as well—afterall, “[they]’re almost done” [with the interrogation].

The evidence that the Defendant’s recorded statement was involuntary is overwhelming especially as compared to the minimal evidence the State provided. Not only did the State fail to prove voluntariness by a preponderance of the evidence, it failed to controvert any of the evidence elicited by the defense in support of involuntariness. The Court should find that based

on the totality of the circumstances, (1) Defendant's statement of accused was the product of a custodial interrogation, (2) that any purported waiver of his *Miranda* rights was not made freely, knowingly and voluntarily, and finally, (3) that the Defendant's statement was also not made voluntarily, but instead was obtained as a result of the coercive and improper actions of law enforcement in violation of his right to Due Process.

**Conclusion and Prayer**

WHEREFORE, PREMISES CONSIDERED, the Defendant prays the Court grant his Motion to Suppress.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that on September 26, 2019, a true and correct copy of the above and foregoing document was served on the District Attorney's Office, Hidalgo County, by electronic service through the Electronic Filing Manager.

/s/ *Lucía Regalado*

Lucia Regalado